Supreme Court, U. S.
FILED
MAR 20 1978
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. 76-1701

TENNESSEE VALLEY AUTHORITY,
Petitioner,

v.

HIRAM G. HILL, JR., ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

MOTION FOR LEAVE TO FILE AND BRIEF OF EAST TENNESSEE VALLEY LANDOWNERS' ASSOCIATION, AMICUS CURIAE, ON BEHALF OF RESPONDENTS

HOWELL H. SHERROD, JR.
249 W. Main Street
Johnson City, Tennessee

POLLY A. PETERSON

ROBERT C. LANGSTON
Attorneys for Amicus Curiae
East Tennessee Valley
Landowners' Association

TENNESSEE LAW PRINTERS, P. O. Box 277, Knoxville, Tennessee, Phone 525-4202

2-27-78-75

In The
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

NO. 76-1701

TENNESSEE VALLEY AUTHORITY,
Petitioner,

v.

HIRAM G. HILL, JR., ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE, EAST TENNESSEE VALLEY LANDOWNERS' ASSOCIATION IN SUPPORT OF RESPONDENTS

The East Tennessee Valley Landowners Association respectfully moves the Court for leave to file the attached Brief of an amicus Curiae in this case.

The East Tennessee Valley Landowners Association would show to the Court that its members, because of their past and present land holdings in East Tennessee, have special interests in the conservation of prime farm lands. In this case the members would show the Court that Congress is currently giving the Tellico project further consideration which includes the preservation of prime farm land, and that this issue could not be debated and would be ignored if TVA were to succeed in persuading this Court to fashion an implied amendment to the Endangered Species Act, thereby foreclosing Congressional review of the whole project. Certain members of the Association would suffer irreparable harm if the Little Tennessee River is impounded and their lands were flooded.

The condemnation of prime farmland, and the excessive condemnation in this case, have not been considered by either party except in the most general of terms, in the District Court or the Court of Appeals for the Sixth Circuit, and yet it is intimately involved in this case.

THIS the 26th day of February, 1978.

HOWELL H. SHERROD, JR.
249 E. Main Street
Johnson City, Tennessee 37601

POLLY A. PETERSON

ROBERT C. LANGSTON

Attorneys for Amicus Curiae:
East Tennessee Valley
Landowners Association

In The
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

NO. 76-1701

TENNESSEE VALLEY AUTHORITY,
Petitioner,

v.

HIRAM G. HILL, JR., ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

BRIEF OF EAST TENNESSEE VALLEY LANDOWNERS' ASSOCIATION, AMICUS CURIAE, ON BEHALF OF RESPONDENTS

The East Tennessee Valley Landowners Assocation is a not-for-profit organization of farmers, landowners, and businessmen. Members comprising the organization own or have owned land in East Tennessee, some parcels of which lie within the Tellico project area. The organization is concerned with the conservation of the region's prime agricultural land.

The purpose of this amicus brief, filed by leave of this Court, is primarily to illustrate to the Court the East

Tennessee Valley Landowners Association concern over the potential loss of prime land which would not have occurred if TVA had followed Federal law in this case. By persisting in the Tellico project as originally planned, TVA threatens to eliminate a major bloc of the area's prime class agricultural land.

ARGUMENT

I.

BY CONDEMNING LARGE ACREAGES OF PRIME AGRICULTURAL LAND FOR THE TELLICO PROJECT, TVA IS ELIMINATING SOME OF THE REGION'S BEST FARM LAND.

The rapidly increasing irreversible loss of land from agriculture is an important concern to the United States, both for this nation and for the food needs of other countries. Conditions indicate that essential food production resources are increasingly important in the United States' role in the world economy. The large surpluses which once characterized American agriculture are now a thing of the past. As population increases, and food and fiber needs grow, we need more prime agricultural land rather than less.

The Little Tennessee River valley contains some of the most fertile farmland in the nation, much of it suitable for large-scale agricultural production. The general nature of the soils within the project area is highly productive, in the top three classes of soils in the United States Department of Agriculture's rating system.

If projects such as the Tellico project, including such broad condemnation of farmlands as has occurred here,

continue to be planned, more and more of the country's most valuable agricultural lands will be irretrievably removed from the hands of farmers, and the worldwide famine predicted by many scientists may be hastened. The utility of this project as stated in TVA goals must be weighed against the loss of prime farmland. Under even the barest scrutiny, TVA's proposal comes out a poor second choice.

II.

THE AGENCY HAS PROCEEDED WITH THIS PROJECT DESPITE CONTRARY FEDERAL LAW, DISREGARDING DEVELOPMENT ALTERNATIVES WHICH WOULD PRESERVE THE AGRICULTURAL LANDS, AND TAKING UNNEEDED LAND.

The case presently before the Court shows that TVA knew that the endangered species existed in its proposed impoundment area as early as 1973, but TVA consistently refused to discuss with the Department of the Interior any project modifications that would have kept the river valley unflooded - as it now exists. (Appendix, pp 240, 395; 192, 249, 395.) When Governor Winfield Dunn of Tennesseee asked the agency to alter its plans to achieve a river-based management which would preserve the farmland, TVA refused. (Letter from Governor Dunn to Chairman Aubrey Wagner, Tellico Environmental Impact Statement, I-3-42 to I-3-51.)

Yet, as the recent Comptroller-General's Report issued by the General Accounting Office shows, the project area has such valuable assets that even today it may be far more beneficial to preserve them than to close the impoundment. (G.A.O. Report Number EMD-77-58,

October 14, 1977.) Besides farming, these non-impoundment values include flowing water recreation, historical and tourist development, other recreation, and industrial parks. (G.A.O. Report, pp. 17-26.) All of these uses would be largely compatible with continuation of farming, and their value is great. G.A.O. noted TVA's admission that the agricultural land that would be eliminated by the reservoir could produce almost twice as much yearly revenue as TVA's reservoir project. (G.A.O. Report, p. 26.)

Given these [illegible] he Tellico case deserves the very serious consideration of Congress, where the question now lies. In the discussions about whether to modify the project to a river-based plan to preserve the endangered species, or to amend the law, Congress will consider the value of the agricultural lands which are also endangered by this project. This Court should not foreclose that important policy-based review by allowing TVA to persuade it to fashion some kind of implied amendment to excuse TVA, after the fact, from compliance with the law.

Even beyond the facts of the Tellico case, the East Tennessee Valley Landowners Association is concerned in general with the kind of over-condemnation TVA exercises in its projects. While it is acknowledged that TVA has extraordinary powers of eminent domain, under the factual situation surrounding Tellico TVA exercised these powers indiscriminately. Of the more than 38,000 acres of land taken or acquired for the Tellico project, only some 16,500 would be used for the reservoir impoundment. The other 21,500 acres, mostly prime farmland, was to be sold by TVA to private developers for the anticipated development of a town to be called "Timberlake" and an adjacent industrial park, or to be developed by

TVA. (Tennessee Valley Authority Environmental Statement: Tellico Project, Vol. I, TVA-OHES-215-72-1, pp. I-2-9 and I-2-10.)

In its Environmental Impact Statement, TVA states that "...TVA is developing plans for the Timberlake new community for 50,000 people, located downstream from the projected industrial area. Although planning for Timberlake is not complete, TVA has developed a general planning framework..." (Id., I-2-11.)

TVA further states "...TVA will prepare one or more supplemental environmental statements, as appropriate, for Tellico land development when detailed proposals are completed." (Id., I-2-13.)

Since the contractor who was to develop Timberlake pulled out of the project, TVA has apparently suspended active plans for Timberlake. TVA presently has no complete formalized plans for either residential or commercial development of the land surrounding the Tellico reservoir. By condemning the excess acres before concrete plans for industrial and residential development were complete, TVA was speculating on the true value of the land by condemning and taking it at an unrealistic price, for resale, in order to help justify the costs of the Tellico impoundment.

As an alternative, TVA could have developed, to a reasonable certainty, plans for residential and industrial development and then condemned only so much of the surrounding prime farmland as was needed for implementing the development plans. This would mean that TVA would pay a more realistic price for the land based on the fair market value of the land existing at the time and in the specific location of the development. This method

would probably remove fewer acres of prime farmland from production than under the present plan.

In several instances, long-held family farmland was completely taken when only a small portion of the farmland would be covered by the Tellico reservoir. Several of these families, some of them members of the East Tennessee Valley Landowners Association, voiced their objections to TVA's excessive taking by remaining on their land in the project area and by refusing to move. (See U.S. ex. rel. TVA v Two Tracts of Land Containing 146.4 Acres in Loudon County, Tennessee, Robert Davis, et. al., 532 F.2d 1083, (Sixth Cir., 1976))

CONCLUSION

This case presents many questions of public concern, only one being the removal of agricultural land from the farming community. These questions of public policy correctly belong within the decision making prerogatives of the Congress. Only then can all the competing interests involved in the case be adequately and fully debated and weighed.

For the reasons stated in the opinion of the United States Court of Appeals for the Sixth Circuit, the decision of the Court of Appeals should be upheld.

Respectfully submitted,

HOWELL H. SHERROD, JR.
249 E. Main Street
Johnson City, Tennessee 37601

POLLY A PETERSON

ROBERT C. LANGSTON
Attorneys for Amicus Curiae:
East Tennessee Valley
Landowners' Association